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**SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI**

<b>STATE OF ARIZONA</b>  (Plaintiff)  <b>vs.</b>  <b>STEVEN CARROLL DEMOCKER</b>  (Defendant)	<b>Case No. P1300CR20081339</b>  <b>COURT ORDER re:</b> <b>Defendant's Motion to</b> <b>Suppress Evidence and</b> <b>Request for Franks Hearing</b>	<b>FILED</b> <b>FEB 0 2 2010</b> <b>DATE:</b> <u>2</u> O'Clock <u>10</u> M. <b>JEANNE HICKS, CLERK</b> <b>BY:</b> <u>SHEETAL PATEL</u> <b>Deputy</b>
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<b>HONORABLE Thomas B. Lindberg</b>	<b>BY: Robin Gearhart / Judicial Assistant</b> <b>Division Six</b>
<b>DIVISION SIX</b>	<b>DATE: February 1, 2010</b>

On October 28, 2009, Defendant, through counsel, filed a Motion to Suppress Evidence and Request for Franks Hearing based on unlawful search and seizure and the fruits of the search pursuant to *Wong Sun v. United States*, 371 U.S. 471 (1963). The State filed its response on November 9, 2009. A reply was filed by the defense on November 13, 2009. The matter was heard at an Evidentiary Hearing on November 18, 2009. Evidence was taken and oral argument was heard. The matter was then taken under advisement.

The Court finds that on July 3, 2008, law enforcement officers obtained a search warrant for the defendant's residence, vehicle and business office from Prescott Justice of the Peace, Arthur Markham. The affiant based his affidavit on information obtained at least in part from Defendant, other parties, such as his daughter and her boyfriend, and other police agents.

The defense asserts the affidavit did not establish probable cause to conduct a search of the broad scope as employed in this case. The Court received and reviewed the affidavit and warrant referred to in the motion. The purpose of an affidavit for a search warrant is to establish that probable cause exists to search a place.

The task of this Court is to determine whether the "totality of the circumstances indicates a substantial basis for the magistrate's decision" to issue a warrant. *State v. Hyde*, 186 Ariz. 252, 272, 921 P.2d 655, 675 (1996). See also *Massachusetts v. Upton*, 466 U.S. 727, 104 S.Ct. 2085, 80 L.Ed.2d 721 (1984). This Court must grant deference to the magistrate's decision. *Hyde*. See also *Illinois v. Gates*, 462 U.S. 213, 236, 103 S.Ct. 2317, 2331, 76 L.Ed.2d 527, 547 (1983) ("After-the-fact scrutiny by reviewing courts of the sufficiency of an affidavit should not take the form of *de novo* review.") This Court must presume the search warrant is valid; it is the defendant's burden to prove otherwise. *Greehling v. State*, 136 Ariz. 175, 665 P.2d 57 (1983); see also *Franks v. Delaware*, 438

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U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). An affidavit for a search warrant must be tested in a common-sense and realistic fashion; if a magistrate has found probable cause, a warrant should not be invalidated by a hyper-technical interpretation. State v. White, 145 Ariz. 422, 427 701 P.2d 1230, 1235 (App.,1985); In re One 1974 Ford Van, 111 Ariz. 522, 523, 533 P.2d 1157, 1158 (1975).

This Court finds that the affidavit for search warrant established probable cause. The Court does not find significant substantive misstatements in the affidavit based on the information known to the affiant.

The "good faith" exception to the exclusionary rule may also properly be applied to the present circumstances. See United States v. Leon, 468 U.S. 897, 922, 104 S.Ct. 3405, 3420, 82 L.Ed.2d 677 (1984); State v. Evans, 177 Ariz. 201, 203, 866 P.2d 869, 871 (1994), rev'd on other grounds sub nom. Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995). In *Leon*, the Supreme Court held that evidence obtained in objective good faith reliance on a faulty search warrant should not be suppressed. 468 U.S. at 922, 104 S.Ct. at 3420. Application of the exclusionary rule would be inappropriate under these circumstances.

For the foregoing reasons, **IT IS ORDERED** that the Defendant's Motion to Suppress Evidence is **denied**.

**DATED** this 1st day of February, 2010.



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The Honorable Thomas B. Lindberg  
Judge of the Superior Court, Division 6

cc: Joseph C. Butner III, Esq., Office of the Yavapai County Attorney (**via facsimile this date to 928-771-3110**)  
John M. Sears, Esq., 107 North Cortez Street, Suite 104, Prescott, Arizona 86301 (**via facsimile this date to 928-445-1472**)  
Larry A. Hammond, Esq., Anne M. Chapman, Esq., Osborn Maledon, P.A., 2929 North Central Avenue, 21<sup>st</sup> Floor, Phoenix, Arizona 85012-2793 (**via facsimile this date to 602-640-6076**)  
Dean Trebesch, Contract Administrator, Office of the Yavapai County Public Defender (**via facsimile this date to 928-771-3413**)  
Victim Services: **Attn. Marie Martinez**

Attorneys/Parties have been  
notified by phone/fax. *kg*  
Date: 2-1-10 @ 4:50pm